



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

August 6, 2009

Control Number: SBSE-05-0809-043
Expires: August 6, 2010
IRM Impacted: 5.8 and 1.4.54.3.2

MEMORANDUM FOR DIRECTORS, COLLECTION AREA OFFICES
DIRECTOR, CAMPUS COMPLIANCE OPERATIONS
(BROOKHAVEN AND MEMPHIS)

FROM: Frederick W. Schindler /s/ Laura Hostelley (*for*)
Director, Collection Policy

Jeffrey J. Basalla /s/ Jeffrey J. Basalla
Director, Campus Filing and Payment Compliance

SUBJECT: Interim Guidance Memorandum for Centralized Offer in
Compromise (COIC) Defining 24-hour Processability
Criteria and Case Building Procedures

The purpose of this memorandum is to issue interim guidance for defining 24-hour processability criteria and case building procedures for an offer in compromise (OIC). Please ensure this information is distributed to all affected employees. The timeframes outlined in this attachment are agreed under a Letter of Understanding (LOU) titled SB/SE Initiative to Establish a Time Frame for Performing Case Building Actions on Offers in Compromise, dated and signed on June 16, 2009. IRM 5.8.3.4.1, 5.8.3.13(1) and (2) will be changed to reflect the agreed timelines.

This memorandum clearly defines the duties of Process Examiners (PE) for processability and case building actions when an offer in compromise (offer) is received in the COIC sites. These procedures also include guidelines to management on assignment of work for COIC employees. IRM 1.4.54.3.2, Assignment of Work, will reflect these changes and encourage management to assign work in a manner that will allow for the most efficient case processing.

If you have any questions, please contact me, or a member of your staff may contact Diane Morris, Program Analyst. Territory and COIC personnel should direct any questions to the appropriate contact.

Attachment

cc: Director, Campus Compliance
National Chief, Appeals
Chief Counsel
National Taxpayer Advocate
www.irs.gov

Attachment

Nature of Changes

- (1) 5.8.3.4.1 – Added a new paragraph (1) to define the 24-hour timeframe for determining processability.
- (2) 5.8.3.13(1) – Added a new paragraph (1) to define the time for case building to be 16 calendar days.
- (3) 5.8.3.13(2) d) – Added a sentence to state that no additional contact would be required if the taxpayer fails to provide any additional information.
- (4) Throughout 5.8.3, changed the term OI (offer investigator) to Process Examiner (PE), Offer Examiner (OE), or Offer Specialist (OS), as appropriate.
- (5) 1.4.54.3.2(2) and (3) – Added new paragraphs (2) and (3) to further define the role of management in assignment of work.

5.8.3.4.1 (09-23-2008) **Processability**

(1) COIC Process Examiners (PE) are responsible for determining processability on all offers received and worked by the Service; including Doubt as to Liability (DATL) offers to compromise a Trust Fund Recovery Penalty (TFRP) or Personal Liability Excise Tax (PLET). All other DATL offers are processed by the Centralized DATL Unit. See IRM 5.8.2.2. This determination must be made within 24 hours of the IRS received date. The 24-hour timeline is established in IRM 3.30.123.3, Accounting and Deposit Guidelines.

(2) An OIC will be deemed not processable if one or more of the following criteria are present:

- a. *Taxpayer in Bankruptcy* – An offer will not be considered while a taxpayer is in bankruptcy. See IRM 5.8.10.2, Bankruptcy.
- b. *Taxpayer did not submit the application fee with the offer* – The application fee of \$150 or the signed Form 656-A, Income Certification for Offer in Compromise Application Fee, must be submitted with each Form 656. Note: No application fee or TIPRA payment is required for offers filed solely based on DATL.
- c. *Taxpayer did not submit the required initial payment with the offer* – If the taxpayer fails to submit either of the following, the offer will be returned as not processable.

(3) Lump Sum Cash offers must include 20% of the offered amount or a signed Form 656-A.

Note: If the taxpayer submits the \$150 application fee and a portion (but not all) of the required initial lump sum payment, the offer will be deemed processable, but not perfected.

(4) Short Term and Deferred Periodic Payment offers must include the initial proposed installment payment or a signed Form 656-A.

(5) The Form 656-A applies only to individual taxpayers.

5.8.3.13 (09-23-2008)

Centralized Offer in Compromise Case Building and Perfection Procedure

(1) COIC Process Examiners (PE) are responsible for case building of all processable offers as defined in IRM 5.8.2.3, Processability, received and worked by the Service. All case building actions and perfection actions should be completed within 16 calendar days of receipt of an OIC at the appropriate COIC site.

(2) For all processable offers to be **transferred** to an Area Office the COIC site will:

- a. Request the following (if applicable) – Additional Forms 656; Additional application fees; Unfiled returns (IMF and BMF); and/or Balance of the required initial 20% payment for a lump sum cash payment.

Note: All tax returns for which the taxpayer has a filing requirement must be filed; however, the look-back period will generally be 6 years. This rule applies even if a Service employee previously decided not to pursue the filing of the return under the provisions of Policy Statement P-5-133, because it was believed to have little or no tax due. See IRM 5.1.11.1.3(2), Delinquent Return Program, which requires employees to conduct a compliance check to confirm and document all IMF tax returns were filed for the preceding 6 year period.

- b. Prepare the combo letter using the paragraphs that address all deficiencies, such as insufficient amount of the required 20% of a lump sum cash offer, application fees, and unfiled returns. If the taxpayer fails to provide any of the requested information, the offer will be returned as a processable return. No additional contact with the taxpayer is required.
- c. Document the AOIC history to summarize the required substantiation submitted with the offer as well as all perfection issues.
- d. If the taxpayer provided or addressed the requested information, the offer will be immediately mailed to the field after transfer on AOIC.

(3) For all processable offers **not transferred** to an Area office, the CIS should be reviewed to verify the taxpayer has submitted all supporting documents.

- a. An analysis of the information provided on the CIS or any other documentation received should be made *prior* to issuing a document request or combo letter.

Note: The letter(s) should *only* request information necessary to make a reasonable collection decision.

- b. Prepare the combo letter using the paragraphs that address all deficiencies, such as insufficient amount of the required 20% of a lump sum cash offer, application fees, missing substantiation, unfiled returns, or incomplete documents, as well as any Form 656 perfection issues. Include Publications 1 and 594.
- c. Document the AOIC history to summarize the substantiation submitted with the offer as well as all perfection issues.
- d. A copy of the signed and dated letter must be retained in the file.

Note: All combo letters will be post-dated five (5) calendar days. Schedule a follow up for the 45th day after the date of the letter. At least 50 calendar days would have elapsed before following up (5 postdate plus 45 calendar days from the date of the letter).

- e. Mail the letter to the taxpayer and representative, if applicable. If a disclosure issue exists, use the appropriate paragraph to indicate this in the combo letter, and do not send a copy to the representative.
- f. Envelopes containing combo letters, including Options B, C, or D, must be stamped or otherwise marked "URGENT - TIME SENSITIVE."
- g. Document the mailing date of the letter on the "I" screen, which will generate the follow-up date on AOIC.
- h. Assign the offer to AOIC designation 5100 or 5300, as identified in IRM 5.8.3.10(4) above.

(4) TIPRA requires inclusion of a \$150 application fee and 20% of the offered amount for a lump sum cash offer or the initial periodic payment if a short term or deferred offer, or a signed Form 656-A. If the taxpayer sends less than 20%, it will be considered a processable offer and investigated accordingly. It will be necessary to request the remainder of the required 20% when the combo letter is issued.

(5) An OIC submitted by a taxpayer who has unfiled tax returns will be a processable offer and investigated accordingly. It will be necessary to either secure the unfiled returns or a statement addressing the filing requirements.

(6) If the taxpayer submits delinquent tax returns with a balance due, the PE will treat the liabilities as missing periods and process the return(s), add the missing periods on the AOIC MFT screen, include the periods on the original Form 656, and continue working the offer.

Note: Paragraph (q) on the Form 656 clearly states that “I/We authorize the IRS to amend Item 5, above, to include any assessed liabilities we failed to list on Form 656.” With this authority agreed by the taxpayer, we will not require the OE to secure an amended Form 656 for the missing periods only.

(7) If the taxpayer indicates that they are no longer required to file a tax return, it will be the responsibility of the Offer Examiner (OE) to close the filing requirements or indicate no liability to file; that is, input of Transaction Code 590 or 591, as appropriate. Refer to Document 6209, Sections 8 and 11 for the appropriate transaction and closing codes and request input of the TC 590/591.

Example: The taxpayer is out of business and is no longer required to file. In the case of a business, if the taxpayer provides information that they are no longer required to file a return (e.g., Forms 941 or 940), close the filing requirements and work the offer.

(8) The following information is considered necessary to allow the OE to make an accurate reasonable collection potential determination. If the following expenses were claimed on the CIS but substantiation was not included, supporting documentation should be requested.

- Income statements for the last 3 months (a current year-to-date statement is acceptable as long as it represents at least 3 months).

Note: For those taxpayers on Social Security or a fixed pension or retirement where the monthly income does not fluctuate, it may only be necessary to secure one monthly statement to verify the amount of income. In some cases, a request for monthly statements would not be necessary when income could be verified through secured bank statements.

- If applicable, 3 months of income statements for any not liable person should also be requested in order to determine a taxpayer's share of living expenses. See IRM 5.8.5.5.4 for additional information on the treatment of shared expenses.
- The last 3 months of bank statements.
- The current available cash value or loan value of life insurance, 401(k), profit sharing or other retirement plans, and the current balance due on any existing loans against that plan. See IRM 5.8.5.3.8, Retirement or Profit Sharing Plans, for more information on valuing a Retirement or Profit Sharing plan.

(9) Substantiation should also be requested for the following information; however, if the taxpayer fails to provide the supporting documentation the expense should be disallowed unless the value can be determined using other sources as indicated below.

If no value can be found, make a determination based on all other information. The following list is not all-inclusive.

- Health insurance and out of pocket cost for the last 3 months (refer to LEM 5.3).
- Current balance due on motor vehicle loans.
- Court orders and proof of payment for the last 3 months.
Note: Court orders will only be required if the payment is to be allowed in the computation of the RCP.
- Current balance due on real estate mortgages.
- Child and dependent care for the last 3 months.
- Other secured debt statements for the last 3 months.
- Life insurance premiums for the last 3 months.

1.4.54.3.2 (10-01-2005)

Assigning Work

(1) Managers are responsible for ensuring that cases are assigned in a timely manner. Assignments are made on the Automated Offer in Compromise (AOIC) system.

(2) Management will endeavor not to assign new cases on weekends, holidays, or when the employee is on leave.

(3) Managers should endeavor to assign work in a manner that will allow for the most efficient case processing.